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DAR - Title Company (Hard Copy)



THIS FORM IS NOT TO BE DUPLICATED

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NOV 05 2009

RECORDING REQUESTED BY:
Union Pacific Railroad Company

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Attention: Richard Gebert
Rosen's Electric Site Project Manager
Brownfields and Environmental Restoration
Program, Chatsworth Office

COPY of Document Recorded At <u>LA</u> County Recorder <u>09-1668545</u> Has not been compared with original. Original will be returned when processing has been completed.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

Re: County of Los Angeles APN 6348-021-807, Union Pacific Railroad Company,
300369-00

This Covenant and Agreement ("Covenant") is made by and between the Union Pacific Railroad Company (the "Covenantor"), the current owner of property situated in the City of Pico Rivera, County of Los Angeles, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department") Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260 The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1

ARTICLE I
STATEMENT OF FACTS

1.01 The Property, totaling approximately 2.25 acres is a portion of the Covenantor's railroad Right of Way, which is more particularly described in Exhibit "A." The Property is located in the area now generally bounded by Rosen's Electrical Equipment Company on the north, a parking lot on the south, and other portions of the Covenantor's railroad Right of Way on the east and west, in Los Angeles County, State of California. The Property is a portion of Covenantor's railroad Right of Way, which is also generally described as Los Angeles County Assessor's Parcel No. 6348-021-807.

1.02 A limited portion of the Property is more particularly described and depicted in Exhibit "B" and Exhibit "C," which are attached and incorporated by this reference, and hereafter referred to as the "Restricted Area." The Restricted Area is located in the area now generally bounded by the southwest portion of Rosen's Electrical Equipment Company on the north, Union Pacific railroad tracks on the south, and other portions of the Covenantor's railroad Right of Way on the east and west, and contains an area referred to as Area of Concern #2 (AOC #2).

1.03 The Rosen's Electrical Equipment Company Responsible Party Group (REEC Group) remediated the Property under the supervision and authority of the Department. The Property was remediated in accordance with a Remedial Action Plan (RAP) pursuant to Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including polychlorinated biphenyls, remain in the soil in and under portions of the Property, the RAP provided that a Covenant be required as part of the site remediation. The Department circulated the RAP, which contains a Health Risk Assessment, together with a draft negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Remedial Action Plan and the negative declaration, were approved by the Department on December 16, 2004. Remediation included installing and maintaining an asphalt cap ("Cap") over the Property. The Cap consists of a low permeability coating overlaying an asphalt layer. The maintenance of the Cap is pursuant to an Operation and Maintenance

Plan dated April, 2007 (Operation and Maintenance Plan).

1.04 As detailed in the RAP, a portion of the surface and subsurface soils within 10 feet of the surface of the Property contain hazardous substances, as defined in Health and Safety Code section 25316, which include the following contaminant of concern in the ranges set forth below: polychlorinated biphenyls (PCBs) (0.14 - 279 parts per million ("ppm")). Based on the Final Risk Assessment the Department concluded that use of the Property as a residence, hospital, hospice, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment if limited to commercial or industrial use.

ARTICLE II

DEFINITIONS

2.01. Department "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Environmental Restrictions "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03 Improvements "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05 Occupant "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06 Owner "Owner" means the Covenantor, its successors in interest, and their

successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property

2.07 Rosen's Electrical Equipment Company Responsible Party Group (REEC Group) "Rosen's Electrical Equipment Company Responsible Party Group (REEC Group)" is composed of and shall mean and refer to the Non-Governmental Respondents and the Governmental Respondents

ARTICLE III GENERAL PROVISIONS

3 01 Runs with the Land This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof

3 02 Binding upon Owners/Occupants Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3 03 Written Notice of the Presence of Hazardous Substances Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions

3 04 Incorporation into Deeds and Leases This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property

3.05 Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Covenant to be paid by Rosen's Electrical Trust Account. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Rosen's Electrical Trust Account agrees to pay the Department's cost in administering the Covenant pursuant to Consent Agreement (Docket No. HAS-CA 08/09-130).

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation
- (b) A hospital for humans
- (c) A public or private school for persons under 21 years of age
- (d) A day care center for children.
- (e) A hospice

4.02 Soil Management

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating activities to be conducted at the Property.

4.03 Non-Interference with Cap Owner agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and written approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Cap.
- (c) The Cap shall not be altered without review and written approval by the Department.
- (d) Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any person falling within the definition of Owner or Occupant shall satisfy this requirement on behalf of all persons falling within the definition of Owner and Occupant.

4.04. Access for Department The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect

the public health or safety, or the environment

4 05 Access for Implementing Operation and Maintenance The entity or person responsible for implementing the Operation and Maintenance Plan shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plan until the Department determines that no further Operation and Maintenance is required

4 06 Reasonable entry and access pursuant to Sections 4 04 and 4 05 shall be subject to, for as long as Covenantor owns the Property:

(a) Compliance with Covenantor's safety plan applicable to entry upon the Property;

(b) Reasonable prior notice to Covenantor of not less than forty-eight (48) hours; and

(c) The on-site presence of an employee of Covenantor during all such activities, unless expressly waived in writing by Covenantor

This Section 4 06 shall not apply if an emergency response is necessary or if the Department is exercising any access authority it may have under the law

ARTICLE V ENFORCEMENT

5 01 Enforcement Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6 01 Variance Covenantor, or any other aggrieved person, may apply to the

Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01 No Dedication Intended Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Department References All references to the Department include successor agencies/departments or other successor entity.

7.03 Recordation The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

James E. Diel
Manager of Site Remediation
Safety – Environmental Management
Union Pacific Railroad
9451 Atkinson Street, Suite 100
Roseville, California 95747

and

To REEC Group:

Dean Charles
de maximis, inc
1322 Scott St, Ste 104
San Diego, CA 92106

and

To Department:

Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Attention: Rosen's Electrical Equipment Company Site Project Manager
Brownfields and Environmental Restoration Program, Chatsworth Office

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements The Rosen's Electrical Trust Account shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15th of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If

violations are noted, the annual report must detail the steps taken to return to compliance. If the REEC Group Parties identify any violations of this Covenant during the annual inspections or at any other time, the REEC Group Parties must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant
Covenantor:

By: *Jon K. Fore*
Title: Assistant Vice President -- Real Estate
Date: 9/28/09

Department of Toxic Substances Control

By: *Richard Hebert*
Title: DTSC Project manager
Date: 10/12/09

Nebraska
State of ~~California~~
County of Douglas

On September 23, 2009 before me,

Gregg A. Larsen
(here insert name and title of the officer/notary),

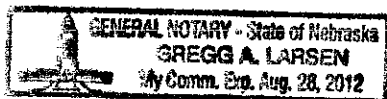
Personally appeared Tony K. Love, Assistant Vice
President - Real Estate

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature Gregg A. Larsen (Seal)



State of California

County of Ventura

On 10-12-09 before me,

C. Morrison / Notary
(here insert name and title of the officer/notary),

Personally appeared Richard Gebert

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature C. Morrison (Seal)

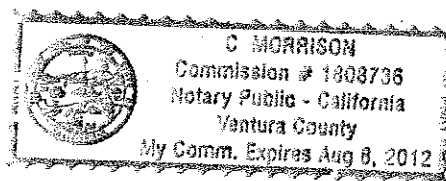


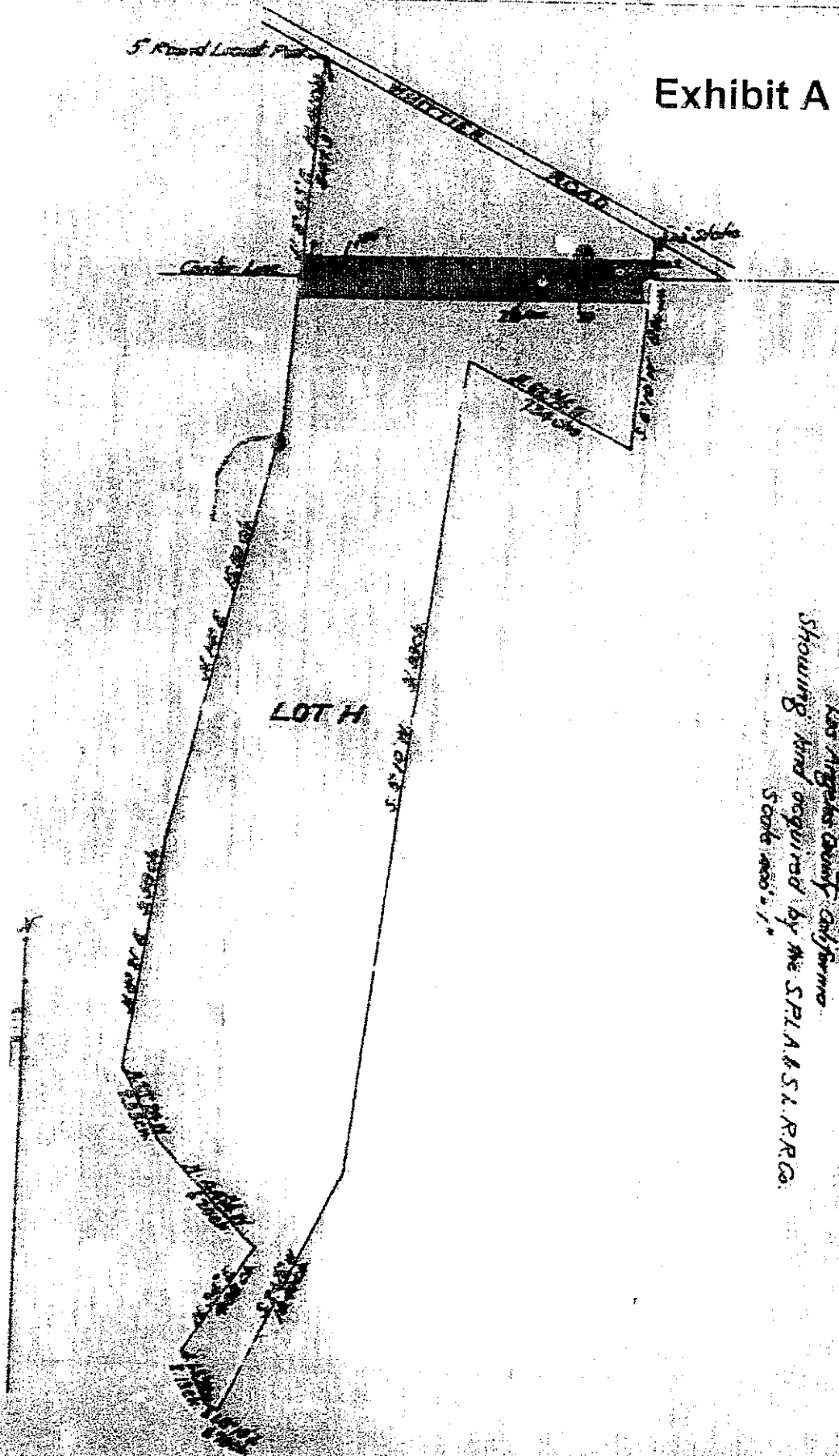
EXHIBIT A

That certain lot, piece or parcel of land situated in the County of Los Angeles, State of California and particularly described as follows, to wit

A strip of land of the uniform width of the One Hundred feet, beign Fifty feet on each side of the center line of the San Pedro, Los Angeles & Salt Lake Railroad as located and staked through, over and across Lot H of Coffman's Partition, being a part of the Rancho Paso de Bartolo, as per map recorded in Book 78, Miscellaneous Records of Los Angeles County, California, at page 25 thereof: said center line being more particularly described as follows, to wit.

Beginning at a point in the westerly line of said Lot H, 547.3 feet southerly from a 5" round locus post set in the most northerly corner of said Lot H, thence true course South 89 degrees 37 minutes East 914.0 feet to a point in the easterly line of said Lot H, 101.2 feet southerly from a three inch by three inch stake set in the most easterly corner of said Lot H: said strip of land containing 2.1 acres, more or less as more particularly appears on the map attached hereto and made a part hereof to which reference is hereby made for more complete description.

Exhibit A (Continued)



Map of Lot H,
 Common's Portion
 Being a part of
 Rancho Pasa De Barilo
 Los Angeles County, California
 Showing land acquired by the S.P.L.A. & S.L.R.R. Co.
 Scale 1000' = 1"

EXHIBIT B

1 THAT PORTION OF LOT H OF COFFMAN PARTITION, IN THE CITY OF PICO
2 RIVERA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP
3 RECORDED IN BOOK 78 PAGE 25 INCLUSIVE OF MISCELLANEOUS RECORDS, IN
4 THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS
5 FOLLOWS:

6
7 COMMENCING AT THE NORTHEASTERLY CORNER OF SAID LOT H; THENCE
8 SOUTH 5° 54'11" WEST 43.88 FEET ALONG THE EASTERLY LINE OF SAID LOT,
9 TO THE NORTHERLY LINE OF SAN PEDRO, LOS ANGELES AND SALT LAKE
10 RAILROAD RIGHT OF WAY 100.00 FEET WIDE; THENCE NORTH 89°44'00" WEST
11 441.70 FEET ALONG THE NORTHERLY LINE OF SAID RIGHT OF WAY TO THE
12 TRUE POINT OF BEGINNING; THENCE SOUTH 00°16'00" WEST 9.18 FEET;
13 THENCE SOUTH 89°00'55" WEST 46.43 FEET; THENCE SOUTH 27°04'25" WEST
14 6.04 FEET; THENCE NORTH 89°44'00" WEST 15.87 FEET; THENCE NORTH
15 79°17'16" WEST 38.90 FEET; THENCE NORTH 89°39'57" WEST 213.89 FEET;
16 THENCE NORTH 00°16'00" EAST 8.23 FEET TO THE NORTHERLY LINE OF SAN
17 PEDRO, LOS ANGELES AND SALT LAKE RAILROAD RIGHT OF WAY 100.00 FEET
18 WIDE; THENCE SOUTH 89°44'00" EAST 317.35 FEET ALONG THE NORTHERLY
19 LINE OF SAID RIGHT OF WAY TO THE TRUE POINT OF BEGINNING
20

21 PREPARED BY:

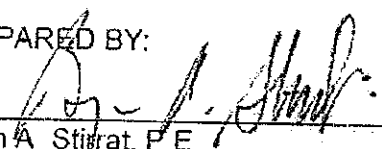
22 
23 Bryan A. Stiglat, P.E.
24 RCE 22631

EXHIBIT C

